JUL 9 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1940

No. 226

WILLIAM DOSTER NOLAND,

Petitioner,

vs.

VYOLA BUBB NOLAND, also known as Vyola Bubb Loughman, and WILFRED L. FARRAR,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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IN THE

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No.....

WILLIAM DOSTER NOLAND,

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vs.

VYOLA BUBB NOLAND, also known as Vyola Bubb Loughman, and WILFRED L. FARRAR,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF.

To the Honorable Justices, the Supreme Court of the United States:

William Doster Noland, the above named petitioner, prays that a writ of certiorari be issued by this Court to review a judgment of the Circuit Court of Appeals for the Ninth Circuit, entered on the 26th day of April, 1940 [R. 129], affirming a judgment of the United States District Court for the Southern District of California, Central Division; and in this behalf petitioner respectfully shows:

Opinion of the Court Below.

The opinion of the Circuit Court of Appeals for the Ninth Circuit was rendered on the 26th day of April, 1940, and is set forth in the record at pages 122 to 128, inclusive.

Statement of the Case.

(1) The Circuit Court of Appeals, Ninth Circuit, affirmed decree of District Court below in the dismissal of complaint in equity without leave to amend [R. 103 to 104].

(2) That on December 13th, 1934, petitioner William Doster Noland and respondent Viola Bubb Noland made and entered into a contract effecting a property settlement between said parties [R. 41 to 45] which settled any and all questions relative to property or property rights of either party to the controversy, and said contract further provided that the respondent Vyola Bubb Noland accepted the sum of $1200.00 as payment in full satisfaction of all claims for alimony, either temporary or permanent, costs or attorney's fees in any action for divorce or separation now pending, or in action, or actions which either party may maintain against the other in the future, and said contract is further accepted by respondent Vyola Bubb Noland, in full satisfaction of any and all claims of every kind, nature and description which said Vyola Bubb Noland now has, or may hereafter have against petitioner William Doster Noland, except as otherwise provided [R. par. Seventh, pp. 43 to 44].

(3) That on the 15th day of December, 1934, the respondent Vyola Bubb Noland procured and had entered of record, a divorce decree in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, which said decree of divorce provided among other things, that petitioner was to be allowed to see and visit his minor child William Doster Noland, Jr., at any and all reasonable times [R. 46 to 48]. Respondent Vyola Bubb Noland, at all times immediately following said decree of divorce rendered by said District Court of the State of Nevada, refused to allow petitioner to see or visit his said minor child, at any time, and after unsuccessful attempts to have the State Courts of California enforce the judgment of the decree of divorce of the said District Court of the State of Nevada, which the said State Courts of California refused to do in compliance with said decree of divorce rendered by said Nevada Court [R. 57 to 68].

(4) That on December 23rd, 1937, petitioner William Doster Noland made an application to the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, for an amended decree of divorce [R. 48 to 51] which was decreed and entered by said Nevada Court, wherein petitioner was given custody of his minor child and any and all payments to respondent Vyola Bubb Noland cancelled and stricken from the record, and said respondent refuses to comply with said amended decree of divorce, as adjudicated by said District Court of the State of Nevada.

(5) That on the 14th day of April, 1938, the Superior Court of California renders a judgment against petitioner,

disregarding aforesaid contract and amended decree of divorce by aforesaid District Court of the State of Nevada [R. 52 to 54].

(6) That on June 27, 1939, the State Court of California, issues order to show cause in contempt, disregarding aforesaid contract and amended decree of divorce by aforesaid District Court of the State of Nevada [R. 54 to 55].

(7) That on July 31st, 1939, petitioner William Doster Noland files first amended civil bill of complaint in equity enforcing foreign judgment and for conspiracy, etc., and application for temporary restraining order; temporary injunction and permanent injunction [R. 2 to 78].

(8) That on July 31st, 1939, the District Court of the United States for the Southern District of California, Central Division, issued a temporary restraining order [R. 78 to 80].

(9) That on August 11th, 1939, the District Court of the United States for the Southern District of California, Central Division, issued a temporary injunction [R. 80 to 82].

(10) That on August 17th, 1939, respondent Vyola Bubb Noland filed an affidavit in support of motion to dismiss in aforesaid District Court of the United States, which said affidavit conflicts with the record [R. 86 to 93].

(11) That on August 22nd, 1939, petitioner filed a notice and motion to take pleadings of respondents off the files [R. 93 to 95].

(12) That on September 23rd, 1939, the aforesaid District Court of the United States filed a memorandum of ruling on defendants' motion to dismiss [R. 96 to 103].

(13) That on September 23rd, 1939, the aforesaid District Court of the United States entered a judgment [R. 103 to 104].

(14) That on October 23rd, 1939, petitioner filed notice of appeal to the United States Circuit Court of Appeals, Ninth Circuit [R. 105].

(15) That on November 4th, 1939, petitioner filed assignment of errors [R. 105 to 107].

(16) That on December 5th, 1939, petitioner filed statement of points and designation of documents and proceedings upon which appellant relies upon appeal [R. 109 to 117].

(17) That on April 12, 1940, the United States Circuit Court of Appeals, Ninth Circuit, made an order of submission, and the matter was submitted to the Court for consideration and cause [R. 121].

(18) That on April 26, 1940, the United States Circuit Court of Appeals, Ninth Circuit, made an order directing filing of opinion and filing and recording decree [R. 121], and the Court rendered an opinion [R. 122 to 128] and also a decree of judgment affirming the judgment of the District Court below [R. 125].

(19) That on June 5, 1940, the Circuit Court of Appeals, Ninth Circuit, made an order denying petition for rehearing [R. 130], and,

(20) On June 10, 1940, the Circuit Court of Appeals made an order staying issuance of mandate [R. 130 to 131].

The Questions Presented.

The Circuit Court of Appeals held:

In effect, that the "First Amended Civil Bill of Complaint in Equity" be dismissed without leave to amend upon the ground of not being within the jurisdiction of the District Court, and so affirmed by the Circuit Court of Appeals.

Questions arise as follows, to-wit:

1. Whether the first amended bill of complaint in equity states a matter of federal jurisdiction.

2. Whether the matter involved is of federal jurisdiction.

3. Contract rights, under the State of Nevada and the United States of America, as a federal and constitutional matter.

4. Local, political and philosophical prejudicial influence and affluence of Ventura County, State of California.

5. Full faith and credit of the judgment rendered in an amended decree of divorce by the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, as provided by the Constitution and Federal Laws of the United States of America.

6. Is the denial of leave to amend a bill of complaint in equity a denial of due process of law.

7. The supremacy of equity over law, as interpreted by fundamental legal conceptions, powers of courts of equity, court of chancery, and as determined by the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT OF CERTIORARI.

I.

The Circuit Court of Appeals Have in This Matter Decided an Important Federal Question in Conflict With the Applicable Decisions of the Supreme Court of the United States.

The holding of the Circuit Court of Appeals set forth under the caption, "The Questions Presented," subdivision 1, the question of whether the first amended bill of complaint in equity states a matter of federal jurisdiction.

Where suits to enforce laws of one state are entertained in courts of another on principles of comity, Federal District Courts sitting should entertain them if they do not infringe on federal law:

> *Milwaukee County v. M. E. White Co.*, 296 U. S. 268 (1935),

and petitioner contends that he has been deprived of his rights and privileges, and to deprive a citizen of rights and privileges in a conspiracy by persons named as respondents in above cause and when a person is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators:

> Chapter III, Civil Rights, Title 8, Sec. 47, subd. (3), Code of Laws of the United States of America; R. S., Sec. 1980;

From Act July 31, 1861, c. 33, 12 Stat. 284;
Act April 20, 1871, c. 22, Sec. 2, 17 Stat. 13,

and the first amended bill of complaint in equity alleges fraud, and courts of equity have jurisdiction in United States Courts to relieve in all cases of fraud:

Tyler v. Savage, 143 U. S. 79, 12 Sup. Ct. 340, 36 L. Ed. 82,

and the acts complained against by petitioner is an unconstitutional invasion of a property right depriving petitioner of rights granted under federal laws and the Constitution of the United States, therefore, a matter of federal jurisdiction is stated:

Truax v. Ralich, 239 U. S. 33, 36 Sup. Ct. 7, 60 L. Ed. 131.

II.

The Circuit Court of Appeals Have Decided an Important Question of Law in Conflict With the Applicable Decisions of the Supreme Court of the United States.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 2, "whether the matter involved is of federal jurisdiction.

Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or any right secured by any law of the United States providing for equal rights of citizens of the United

States, or of all persons within the jurisdiction of the United States:

Code of laws of the United States, as follows:

U. S. C., Title 28, Sec. 41, subd. (14):

R. S. 563, par. 12; Sec. 629, par. 16;

Mar. 3, 1911, c. 231, Sec. 24, par. 14, 36 Stat. 1092,

and every person who causes to be subjected, any citizen of the United States, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress:

Code of Laws of the United States, as follows:

U. S. C., Title 8, Sec. 43;

R. S. Sec. 1979:

From Act April 20, 1871, c. 22, Sec. 1, 17 Stat. 13,

and if legislatures and courts of the several states may at will annul the judgments of the courts of the United States, supported by the Constitution of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals. So fatal a result must be depreciated by all; and the people of one state not less than the citizens of every other state, must feel a deep interest in resisting principles as destructive of the United States and its Constitution, and averting consequences as fatal to themselves:

United States v. Judge Peters (Cranch. 5), U. S. Reps. 9, p. 136.

III.

The Circuit Court of Appeals Have Decided a Most Important Question of Law in Conflict With Applicable Decisions of the Supreme Court of the United States and Contrary to the Constitution of the United States.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 3, "contract rights under the state of Nevada and the United States of America, as a federal and constitutional matter."

Among the important matters involved in this matter is a contract for property settlement, made and entered into by and between the petitioner William Doster Noland, and the respondent Vyola Bubb Noland, also known as Vyola Bubb Loughman [R. 41 to 45], and the matter of contracts is one of the most important parts of the Constitution of the United States, in fact so important that the honorable gentlemen who drafted the Constitution of the United States, made the matter of contracts one of the foremost thoughts of their minds, relative to the Constitution, as under Article I, Sections 9 and 10, they repeated, "No bill of attainder or ex post facto law shall be passed," prohibiting either the United States Congress or any state from passing such legislation, and also they prohibited, as follows: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, . . .," and under the provisions of the said contract for property settlement by and between the said petitioner and respondent, among the various obligations of said contract, was the obligation of release as to certain liabilities, consisting as follows: That the petitioner was not to be held responsi-

ble in any manner for the further payment of any attorney fees, costs, court costs or otherwise, in any litigation conducted by said respondent, such matters being fully settled by the provisions of said contract, and also other matters were fully settled, as the said contract reads in part as follows:

> This Agreement made and entered into this 13th day of December, 1934, by and between William Doster Noland, First Party, and Vyola Bubb Noland, Second Party.
>
> Now, Therefore, It is Agreed:
>
> First: That, except as hereinafter specified, each party hereto is hereby released and absolved from any and all obligations and liabilities for the future acts and duties of the other, and that each of said parties hereby releases the other from any and all liabilities, debts, or obligations of any kind or character incurred by the other from and after this date, and from any and all claims and demands, including all claims of either party upon the other for support and maintenance as wife or husband or otherwise, it being understood that this instrument is intended to settle the rights of the parties hereto in all respects, except as hereinafter provided.
>
> Seventh: First Party does hereby release any and all claims to the sum of approximately $1200.00 heretofore obtained by Second Party from the safety deposit box of the parties hereto, said sum being accepted by Second Party in full satisfaction of all claims for alimony, either temporary or permanent, costs or attorney's fees in any action for divorce or separation now pending, or in any action, or actions which either party may maintain against the other in the future, and said sum is further accepted in full

satisfaction of any and all claims of every kind, nature and description which Second Party now has, or may hereafter have against First Party, except as otherwise provided herein.

Eleventh: Each party to this agreement hereby solemnly and specifically avers that the foregoing agreement has been entered into without undue influence or fraud or coercion or misrepresentation or for any cause except as herein specified, said agreement having been executed after both parties hereto have had the advice of counsel.

Twelfth: It is agreed that the provisions of this agreement shall be incorporated in any decree of divorce which may be hereinafter obtained by either of the parties hereto.

WILLIAM D. NOLAND, First Party.

VYOLA BUBB NOLAND, Second Party.

Signatures of the parties acknowledged before a Notary Public.

The record shows, that, the respondent Vyola Bubb Noland, and she is also the second party to the foregoing contract, that the said respondent, has through and by fraud procured judgments in courts as shown in the record, disregarding the foregoing contract and its obligations on her part, and the obligations of this said contract have been impaired to the detriment and serious damage, to the extent of being irreparable injuries, losses and damages, caused to petitioner hereof, regardless of

the provisions of the Constitution of the United States of America, which provides as follows, to-wit:

> No State shall . . . pass any Bill of Attainder, ex post facto Law, *or Law impairing the Obligation of Contracts*, . . .
>
> Article I, Section 10, Constitution of the United States,

and the power to impair the obligations of contracts is denied to states, but, nevertheless, the Superior Court of the state of California, regardless of the constitutional provision impaired the obligations of the foregoing contract, detrimental and injurious to petitioner, as shown in the record [R. 52 to 55], and likewise judgment of the United States District Court below [R. 103 to 104], and likewise judgment of the Circuit Court of Appeals, Ninth Circuit [R. 129], and the contract clause aforesaid of the Constitution of the United States is a limitation on the power of the states, whatever form it may assume, if a contract right is thereby impaired:

> *Murray v. Charleston*, 96 U. S. 432, 444 (1878);
>
> *Sturges v. Crowninshield*, 4 Wheat. 122 (1819),

and the contracts which the Constitution of the United States protects are contracts and the rights of such contracts such as the aforesaid contract hereof, as made by and between the said petitioner and the said respondent, as this said contract relates to property rights:

> *Stone v. Mississippi ex rel. Harris*, 101 U. S. 814 (1880);
>
> *Douglas v. Kentucky*, 168 U. S. 488 (1897),

and if courts are to regard the Constitution of the United States as the supreme law of the land, and the Constitution is superior to any ordinary act of the Legislature, the Constitution and not such ordinary act, must govern the case to which they both apply, and when the statute rule intervenes the contract, the statute rule is inoperative:

Marbury v. Madison (1 Cranch), U. S. Reps. 5, pages 61, 68, 69, 70, 71 and 72,

and in considering a contract, the actual conditions of the contract cannot be ignored; the Court ought not, by overnice refinements or through assumptions out of harmony with patent facts, to facilitate the practical destruction of admitted legal obligations:

United States ex rel. Von Hoffman v. Quincy, 4 Wall. 535 (1867),

and the contract clause of the Constitution protects rights under the contract and not mere incidental advantages:

Ochiltree v. Iowa R. Contracting Co., 21 Wall. 249, 253 (1875),

and the obligation of a contract includes everything within its obligatory scope; among these elements nothing is more important than the means of enforcement; this is the breadth of its vital existence, and without it the contract as such ceases to be; the ideas of right and remedy are inseparable:

Edwards v. Kearzey, 96 U. S. 595, 600 (1878),

and the obligation of contract is in fact the law which binds the parties to perform their agreement:

Curran v. Arkansas, 15 How. 304 (1853),

and it is the means which, at the time of its creation:

Worthen (W. B.) Co. ex rel. Street Improv. Dis. v. Kavanaugh, 295 U. S. 56 (1935),

the law affords for its enforcement:

Walker v. Whitehead, 16 Wall. 314 (1873);

Louisiana ex rel. Nelson v. St. Martin's Parish, 111 U. S. 716, 720 (1884),

and the constitutional prohibition against impairment of contract obligations has no reference to the degree of impairment:

United States ex rel. Von Hoffman v. Quincy, 4 Wall. 535 (1867),

and the extent of the impairment is not material:

Green v. Biddle, 8 Wheat. 1 (1823);

Farrington v. Tennessee, 95 U. S. 683 (1878),

and it is not a question of degree; the obligation must not be diminished at all:

Planters' Bank v. Sharp, 6 How. 301 (1843).

IV.

The Circuit Court of Appeals Have Decided an Important Question of Law in Conflict With Applicable Decisions of the Supreme Court of the United States and Contrary to the Constitution and Federal Laws of the United States.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 4, "Local political and philosophical prejudicial influence and affluence, of Ventura County, State of California."

The record shows that local political and philosophical prejudicial influence and affluence of Ventura County, State of California, have played an important part in the matters involved in this cause [R. 30, par. XXI½], wherein petitioner was arrested outside the city of Ventura on the highway, while on his way to attend a hearing of the matter involved herein, before the Superior Court of the State of California in and for the county of Ventura, and after being arrested on the highway on a trumped up charge of speeding, your petitioner was brought before Judge Loughman, a Justice of the Peace in the city of Ventura, California, and husband of the respondent Vyola Bubb Noland, divorced wife of your petitioner, and the said Judge Loughman presiding as the Court during the hearing, viciously in a most vitrolic manner attacked your petitioner for supposedly disturbing his home with the said respondent Vyola Bubb Noland through and by the litigation being conducted in the matters involved in the cause hereof, and after said vicious

and vitrolic attack the said Judge Loughman imposed threats and a fine upon your petitioner, which in itself as a procedure, takes on an aspect that the political organization in said instance, conduct and administrate justice in a totalitarian or soviet formation of their own liking, against your petitioner, instead of as provided under the Constitution of the United States, and upon the said respondent Vyola Bubb Noland, preparing for her marriage to the said Judge Loughman, she sent to your petitioner and asked your petitioner to give her an affidavit, setting forth that your petitioner had not been baptized in any church, which your petitioner refused because your petitioner had been baptized, the said respondent representing that it was necessary to have such affidavit for the purpose to marry the said Judge Loughman in the Catholic Church as the said Judge was a Catholic, and your petitioner not being a Catholic Church member, but instead of such your petitioner is a Protestant, therefore, the said respondent married the said Judge Loughman without said affidavit, representing that she could thereby become a member of the Catholic Church; and thereby use the influence and affluence of said church against your petitioner in her litigation against petitioner hereof, which was thoroughly demonstrated in the hearing held before the said Judge Loughman as set forth in the record hereof at page 30, paragraph XXI½, and also set forth in the record hereof, at page 29, paragraph XXI¼, and at page 30, paragraph XXII, and is further set forth in the record in the affidavit of William Doster Noland, petitioner hereof, at pages 39 and 40 of said record, par-

ticularly in paragraphs 4 and 5 of said affidavit on page 40 of record hereof, and is further demonstrated [R. 52 to 55], all of which shows without any question of doubt, that the local political and philosophical prejudicial influence and affluence of the Catholic Church in Ventura County, State of California, have been used by the said respondent to the extent that your petitioner could not under any color of justice or law receive either justice or provisions of the law as provided by the Constitution of the United States of America, in the said County of Ventura, State of California, and the said local prejudice of Ventura County, State of California as used against your petitioner is further supported by affidavits of William Doster Noland, petitioner hereof [R. 56 to 68], and the said affidavits filed in the District Court below fully establish that the local political and philosophical prejudicial influence and affluence set forth the fact that your petitioner had reason to believe and did believe that, from the prejudice of said influence and affluence, he was unable to obtain justice in any Court of Ventura County, State of California.

The foregoing record, establishes beyond any doubt that the local prejudice was outstanding against your petitioner in Ventura County, State of California, coupled to the conspiracy and fraud as alleged in the first amended bill of complaint in equity, is a deprivation of citizenship rights and privileges, and to deprive a citizen of rights or privileges in a conspiracy of two or more persons, and also depriving a citizen of having exercised any right or privilege of a citizen of the United States, the party so

injured or deprived may have an action for the recovery of damages, against one or more of the conspirators, and said action may be prosecuted in the United States Courts:

Chapter 3, Civil Rights, Title 8, Section 47, Subd. (3); R. S. Section 1980;

From Act July 31, 1861, c. 33, 12 Stat. 284;

Act April 20, 1871, c. 22, Sec. 2, 17 Stat. 13,

and in the foregoing procedure such as the record shows and as set forth under this paragraph IV hereof, is a deprivation and denial of rights, privileges, personal liberty, property and property rights, as the conspirators named as respondents herein, placed themselves in the position of being the majority, and placed your petitioner in the position of being in the minority, is very similar to a matter wherein the majority, under the provisions of the Bituminous Coal Conservation Act of 1935 (49 Stat. 991), which authorized a specified majority of producers and miners to fix maximum hours, and minimum wages within the several districts, compulsory upon the minority by virtue of the tax rebate (13½ per cent of the 15 per cent tax on coal at the mine) to members of the coal code, and denial of Government purchases, was held to be unconstitutional interference with personal liberty and private property:

Carter v. Carter Coal Co., 298 U. S. 238, 311 (1936),

and the aforesaid local prejudice have deprived and denied your petitioner his contract rights under aforesaid contract by and between petitioner and respondent Vyola

Bubb Noland, and valid contracts are property, whether the obligor be a private individual or otherwise and rights of contracts are protected by the Constitution of the United States:

Lynch v. United States, 292 U. S. 571, 579 (1934):

Fifth Amendment, Constitution of United States,

and the aforesaid local prejudice which has been exercised against your petitioner in Ventura County, State of California, is a denial of due process of law, and the general scope of the Fifth Amendment of the Constitution is frequently measured by the settled scope of the Fourteenth Amendment as against the States, and the Court has proceeded on the assumption "that the legal import of the phrase 'due process of law' is the same in both amendments":

French v. Barber Asphalt Paving Co., 181 U. S. 324, 329 (1901),

and "if any different meaning of the same words as they are used in the Fourteenth Amendment (and in the Fifth Amendment) can be conceived, none has as yet appeared in a judicial decision":

14th Amendment, Constitution of United States;

Twining v. New Jersay, 211 U. S. 312, 326 (1932),

and the provision of the 14th Amendment of the Constitution of the United States for the protection of your petitioner, in his rights of liberty, property and property rights, and due process of law, it is old as a principle of civilized government, and it is found in the Magna Charta; it is a guaranty against any encroachment upon an acknowledged right of citizenship:

Munn v. Illinois, 94 U. S. 113, 123-124 (1877),

and the protection of the Fourteenth Amendment of the Constitution is for the benefit of those who are injured through the invasion of personal or property rights:

> *Tyler v. Judges of the Court of Registration*, 179 U. S. 405, 410 (1900),

and it must be observed that the prohibitions of the Fourteenth Amendment of the Constitution refer to all the instrumentalities of the state, to its legislative, executive, and judicial authorities, and, therefore, whoever by virtue of public position under a state government deprives another of any right protected by said amendment, violates the constitutional inhibition, and the constitutional prohibition has no meaning, if an agent of a state has power to annul or evade it:

> *Ex parte Virginia*, 100 U. S. 339, 346-347 (1880);
>
> *Gibson v. Mississippi*, 162 U. S. 565 (1896),

and these principles have been enforced, in which it was held that the prohibitions of the Fourteenth Amendment of the Constitution extended to all acts of the state, whether through its legislative, its executive, or its judicial authorities:

> *Scott v. McNeal*, 154 U. S. 34 (1894),

and when the suit is one arising under the laws of the United States, and, under the acts of Congress, the Supreme Court of the United States may review the decision of the state court on the federal question raised:

> *St. Louis, I. M. & S. R. Co. v. Taylor*, 210 U. S. 281 (1908).

V.

The Circuit Court of Appeals Have Decided an Important Question of Law in Conflict With Applicable Decisions of the Supreme Court of the United States and Contrary to Provisions of the Constitution of the United States.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 5, "Full faith and credit of the judgment in an amended decree of divorce by the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, as provided by the Constitution of the United States of America."

The record shows that on the 23rd day of December, 1937, that the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, made and entered an amended decree of divorce in favor of petitioner, and that the Superior Court of the State of California, in and for the County of Ventura, had proceedings and held hearings opposing and restraining the said amended decree of divorce, regardless of the fact that the Constitution of the United States provides:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."
>
> *Constitution of United States,* Article IV, Sec. 1.

A number of cases have held that under the full faith and credit clause a sister-state judgment cannot be impeached for fraud, but such attack must be made in the state where the judgment was rendered:

Christmas v. Russell, 5 Wall. 290 (1866);

Maxwell v. Stewart, 21 Wall. 77 (1875);

Simmons v. Saul, 138 U. S. 439,

and dicta are found in Supreme Court cases, that a judgment by a state may not be impeached for fraud as proposed in the record by respondents:

Hanley v. Donoghue, 116 U. S. 1, 4 (1885);

Wisconsin v. Pelica Ins. Co., 127 U. S. 265 (1888),

and it has been held that a judgment enforceable in the state where rendered must be given effect in another state under the full faith and credit clause:

Sistare v. Sistare, 218 U. S. 1 (1910),

and the enforcement of claims otherwise within protection of the full faith and credit clause cannot be denied by courts, when courts have general jurisdiction of the subject matter and the parties:

Broderick v. Rosner, 294 U. S. 629 (1935),

and the record shows that a temporary restraining order made ex parte without notice and without a return date was issued by the Superior Court of California, Ventura County, against the enforcement by petitioner, of the amended decree of divorce made and entered by the Eighth

Judicial District Court of the State of Nevada, in and for the County of Clark, regardless of the fact that the courts of one state have no jurisdiction to enjoin the enforcement of judgments at law obtained in another state:

Embry v. Palmer, 107 U. S. 3, 13 (1883),

and the records, judicial proceedings of one state shall be given the same effect in courts of another state as they have by the laws and usage at home:

Chicago & Alton Ry. Co. v. Wiggins Ferry Co., 119 U. S. 615, 622 (1887).

And a judgment of a state court, when the question is presented for decision in a court of another state, is entitled to as much force and effect as it has in the state in which it was rendered:

Ohio v. Chattanooga Boiler & Tank Co., 289 U. S. 439 (1933),

and no greater effect can be given than is given in the state where rendered:

Robertson v. Pickrell, 109 U. S. 608, 610 (1883),

and the extent of conclusiveness is that when duly pleaded and proved, judgments of other states have the effect of being not merely *prima facie* evidence but conclusive proof of the rights thereby adjudicated:

Everett v. Everett, 215 U. S. 203 (1909),

and a judgment cannot be impeached either in or out of the state by showing that it was based on a mistake of law:

> *American Express Co. v. Mullins,* 212 U. S. 311, 312 (1909).

And it is the duty of courts to support each and every right guaranteed by the Federal Constitution and courts are not at liberty to decide a cause contrary to the provisions of the Constitution of the United States:

> *Cooley's Constitutional Limitations,* and cases cited (p. 159, *et seq.*), and,

and,

> *Constitution of United States,* Article VI, Clause 2,

reads in part as follows:

> "This Constitution and the laws which shall be made in pursuance thereof; . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

And the Constitution of the United States is the fundamental law of the United States in opposition to which any order or law must be inoperative:

> *Cooley's Constitutional Limitations,* 4th Ed. 56 (*45).

VI.

The Circuit Court of Appeals Have Decided an Important Question in Conflict With the Decisions of the Supreme Court of the United States and in Conflict With the Weight and Authority of Equity.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 6 "Is the denial of leave to amend a bill of complaint in equity a denial of due process of law."

The record shows that the District Court below dismissed without leave to amend and affirmed by the Circuit Court of Appeals for the Ninth Circuit, and it has been held, that to deny leave to amend a bill of complaint in equity, is a denial of due process of law and is a reversible error:

Kendig v. Deane, 97 U. S. 423;

Rogers v. Penobscot Mix. Co., 154 Fed. 606,

and in the case of:

United States v. Lehigh Valley R. R. Co., 220 U. S. 287,

the United States proceeded, both by equity and mandamus, against certain railroad companies, and Mr. Chief Justice White delivered the opinion, saying:

> "Deciding as we do, that error was committed in denying leave to file proposed amended bill, the decree below is reversed and the cause remanded with directions for further proceedings in conformity with this opinion."

VII.

The Circuit Court of Appeals Have Decided An Important Question in Conflict With the Applicable Decisions of Circuit Courts of Appeals, Courts of Equity of the United States, and in Conflict With Applicable Decisions of the United States Supreme Court.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 7, "The supremacy of equity over law, as interpreted by fundamental legal conceptions, powers of courts of equity, court of chancery, and as determined by the Supreme Court of the United States."

A Court of Equity in the United States Court have jurisdiction regardless of state courts and are not bound or modified by state laws or practice:

> *Green Admix. v. Creighton,* 23 Howard 98, 108, 18 L. Ed. 419.

And United States Courts sitting in equity are not powerless by statutory provisions, but may apply their own rule:

> *Kirby v. L. S. & M. S. Ry. Co.,* 120 U. S. 130, 7 Sup. Ct. 430, 30 L. Ed. 569,

and if the judgments of the United States Courts may be annulled by the several states, the Constitution itself becomes a solemn mockery:

> *United States v. Judges,* 32 Fed. 714,

and in referring to the "Constitution of the United States," Pomeroy on the Constitution, a recognized authority, says:

At page 94:

> "is a fundamental statute of the whole people, passed by them in their organic capacity, binding upon themselves and upon all the agents which they have set up and clothed with limited functions. Beyond this statute neither congress nor president can lawfully go; going beyond their acts are nullities and not laws,"

and at page 17:

> "Every statute, every administrative act, every exercise of jurisdiction must be tested by, and conform to, this fundamental utterance of the people's sovereign will,"

and on the same page, he states:

> "is law to legislatures, to executives, and to courts, both of the nation and of the states. The Constitution of each commonwealth is, in like manner, a law to its local authorities. Every statute, every administrative act, every exercise of jurisdiction must be tested by and conform to this fundamental utterance of the people's sovereign will."

And whatever power may be granted, no power can be given to do what the laws of the United States forbid, whether they call their action administrative or judicial:

Penn. R. Co. v. Pol. Ser. Com., 250 U. S. 566,

and allegations of fraud, such as are set forth in the record, are sufficient when made on information and belief, for jurisdiction in a court of equity of the United States,

and it has been held that it is sufficient for the court to consider the matter:

Holton v. Davis (C. C. A. 9), 108 Fed. 138, 149,

and the Supreme Court have held the fact of being a party does not estop a person from relief against fraud, as it is generally parties to the action that are the victims of fraud:

Johnson v. Waters, 111 U. S. 640, 28 L. Ed. 547, 556,

and a Court of Equity has jurisdiction to protect property, even though in complying with the decree of the court to perform acts beyond the jurisdiction of the court:

Massie v. Watts, 6 Cranch 148, 157, 3 L. Ed. 181.

And in a case very similar to the matter hereof before the Court, in the case of:

Graver v. Fauret (C. C. A. 7), 76 Fed. 257,

the Court had before it a bill to enjoin a decree in equity by a state court, wherein Graver brought a suit in equity in the Superior Court of Cook County, Illinois, against Faurot, alleging fraud, and a violation of confidential relationship in the sale of $15,000.00 of stock to him. All of the evidence was in the hands of the defendants. They filed an answer denying the charge of fraud. The Court dismissed the bill upon this answer. It was afterwards discovered the answer was false (and the answer of respondents in this matter before the Court, in the District Court below is false, wherein respondent Vyola Bubb Noland supported her answer with an affidavit claiming the procedure and decree of Nevada Court had not been presented to the Superior Court of the State of California, in and for Ventura County, when the affidavits of

petitioner show that said procedure of Nevada Court had been presented to the said Superior Court of California [R. pp. 57 to 60] in an excerpt of transcript of hearing on February 7, 1938, and that the proceedings, records and judicial proceedings of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, were introduced in evidence before the said Superior Court of California [R. pp. 65 to 66, par. IV subds. 1 and 2, and Exhibit A, pp. 67 to 68], and the said affidavit of respondent Vyola Bubb Noland [R. p. 92, par. 13] reads as follows:

> "That during said hearing of March 24, 1938, William Doster Noland did not, and at all times did not, seek to introduce in evidence the contract of settlement heretofore referred to, or the Nevada decree of divorce or the Nevada modification of said decree of divorce, nor were any of said documents and records ever introduced into evidence in the Superior Court of the State of California, in and for the County of Ventura,"

and such affidavit filed in the District Court in support of motion to dismiss is a false answer very similar to the case of *Graver v. Faurot* (C. C. A. 7), 76 Fed. 257, cited hereof, whereupon this action of *Graver v. Faurot* was brought in the Federal Court to set aside the former Illinois State Court decree. The District Court below had dismissed the complaint, and the Circuit Court of Appeals in reversing it said:

> "A decree for the respondents went as a matter of course. There was practically a default on the part of plaintiff, brought about by the false answers and

affidavits. Technically the answers were evidence at the hearing but before the hearing they served the distinct purpose of denying to the plaintiff information which the respondents were under duty to furnish, and so of depriving him, before the test of trial, of his standing in court. That was an extrinsic, collateral fraud, distinct from and antecedent to the use of answers as evidence at the hearing":

Grazer v. Faurot (C. C. A. 7), 76 Fed. 257, 262,

and the Court after stating the apparent conflict between the parties in the cases as follows:

Marshall v. Holmes, 141 U. S. 589, 35 L. Ed. 870; and

United States v. Throckmorton, 98 U. S. 61, 25 L. Ed. 93,

the Court said:

"If there is here any inconsistency with the opinion in United States v. Throckmorton, to which reference was made, it was not the result of oversight, and ought perhaps to be regarded as an intentional modification of the earlier utterance. But whether there is conflict between the two opinions, or how they are to be reconciled, we need not consider. The present case, if we have properly interpreted the facts alleged, is distinguished from both, and rests upon an equity of which there can be no just denial. In reason and good conscience a decree obtained as this is alleged to have been, ought to be annulled. There can be no consideration of public policy or of private right on which it ought to stand. There can be and ought to be no repose of society where for such wrongs the courts are incapable of giving redress.

The decree of the Circuit Court is reversed and the cause remanded with direction to overrule the motion to dismiss the bill."

Graver v. Faurot (C. C. A. 7), 76 Fed. 257, 263,

and the supremacy of equity over law, is for the purpose of leveling of the inequalities of the law in a conflict between parties, as in many instances, sometimes the law favors one party more so than the other, and in such case, justice may be found only in equity, and not in law, therefore, in case of conflict as distinguished from concurrence, a jural relation is substantively determined by the equitable rule rather than the legal. Since, in any sovereign state, there must, in the last analysis, be but a single system of genuine law, since the various principles and rules of that system must be consistent with one another, and since, accordingly, all genuine jural relations must be consistent with one another, two conflicting rules, the one "legal" and the other "equitable" cannot be valid at the same moment of time; one must be valid and determinative to the exclusion of the other. As a mere practical matter, the equitable rule would ordinarily prove triumphant because of the superior coercive procedure and remedies of the Court of Chancery:

Bennet v. Butterworth, 11 How. (U. S.) 669, 13 L. Ed. 859;

The Relations Between Equity and Law (1913), 11 Michigan Law Review, 537, 553, 555, 557, reprinted in (1923) Fundamental Legal Conceptions, 131, 133, 136, Prof. Wesley N. Hohfeld; and see,

Cook, Powers of Courts of Equity, 15 Columbia Law Review, 235-238 (1915).

Conclusion.

Several questions of great importance are presented, but the most outstanding question is a contract relative to property and property rights, and full faith and credit of a foreign judgment made and entered in the District Court of the State of Nevada, and the fraud as set forth in the record, which the Circuit Court of Appeals have decided in conflict with the decisions of other Circuit Courts of Appeals, Courts of Equity, the Supreme Court of the United States, federal laws, and the Constitution of the United States, which is clearly set forth in the record and petition for writ of certiorari herewith, and your petitioner respectfully submits the record on appeal before this Honorable Court, including the proceedings had before the Circuit Court of Appeals for the Ninth Circuit.

Your petitioner respectfully submits the record and all papers and pleadings on file herewith. This appeal is not taken for the purpose of delay, but in the hope that your petitioner will be able to obtain relief against the injustice of the matters as set forth in the record to which your petitioner has been subjected to in this matter.

Petitioner respectfully prays that the writ of certiorari shall be ordered to issue.

Respectfully submitted,

CALVIN S. MAUK,
Solicitor for Petitioner.

CALVIN S. MAUK,
Of Counsel.

Certificate of Verification.

State of California, County of Los Angeles—ss.

William Doster Noland, being first duly sworn, deposes and says: That he is the petitioner in the above and foregoing action; that he has read the foregoing and within petition and that the allegations therein and thereof are true as he verily believes and that the same is not interposed for delay.

WILLIAM DOSTER NOLAND,
Petitioner.

Subscribed and sworn to before me this 3rd day of July, 1940.

(Seal) EDNA M. TILTON,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires on July 20, 1940.